Legislation Details (With Text)

File #:	54089	**Version:**	1	**Name:**	11674 Disposal - 14 S. Paterson St. Water Utility Parking Lot
Type:	Resolution			**Status:**	Passed
File created:	12/7/2018			**In control:**	FINANCE COMMITTEE
On agenda:	2/5/2019			**Final action:**	2/26/2019
Enactment date:	3/1/2019			**Enactment #:**	RES-19-00141

Title: Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and 849 EWASH, LLC, a Wisconsin limited liability company, for the disposal of the city-owned property located at 14 S. Paterson Street. (6th A.D.)

Sponsors: Marsha A. Rummel

Indexes:

Code sections:

Attachments: 1. 11674 Resolution Exhibit A.pdf, 2. 11674 Resolution Exhibit B.pdf

Date	Ver.	Action By	Action	Result
2/26/2019	1	COMMON COUNCIL	Adopt	Pass
2/5/2019	1	WATER UTILITY BOARD	Return to Lead with the Recommendation for Approval	Pass
1/28/2019	1	FINANCE COMMITTEE	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
1/8/2019	1	FINANCE COMMITTEE	Referred	
1/8/2019	1	COMMON COUNCIL	Refer	Pass
12/7/2018	1	Economic Development Division	Referred for Introduction	

Fiscal Note

The proposed resolution authorizes the sale of a City owned parcel located at 14 S. Paterson Street. The total purchase price is $380,000. Proceeds for the sale will be deposited in the Water Utility fund.

The proceeds generated from the sale of this property will support the Water Utility's efforts to build a cash balance; a total of nine properties are targeted to be sold by the end of 2019.

MUNIS:
Debit 21013100-11000 $380,000.00
Credit 21038900-19100 $14,260.35
Credit 86543400-48130 $365,739.65

Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and 849 EWASH, LLC, a Wisconsin limited liability company, for the disposal of the city-owned property located at 14 S. Paterson Street. (6th A.D.)

Body

WHEREAS, the City of Madison Water Utility (the “Seller”) is the owner of the property located at 14 S. Paterson Street in the City of Madison, Dane County, Wisconsin (the “Property”), as legally described on the attached Exhibit A and depicted on attached Exhibit B; and

WHEREAS, the Seller has identified the Property as surplus property; and

WHEREAS, the Property is exempt from the disposal of surplus property requirements set forth in Madison General Ordinances Sec. 8.075 because it is owned by the Water Utility; and

WHEREAS, the Seller desires to convey the Property to 849 EWASH, LLC (the “Buyer”); and

WHEREAS, the contemplated purchase price of $380,000 is based upon an appraisal which was reviewed and approved by the City of Madison Office of Real Estate Services; and

WHEREAS, the Buyer and Seller (the “Parties”) have agreed to the terms of a Purchase and Sale Agreement.

NOW, THEREFORE BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the Mayor and City Clerk to execute a Purchase and Sale Agreement (the “Agreement”) to sell the Property to the Buyer, subject to the following terms and conditions:

1. Property. The Buyer shall purchase, and the Seller shall sell and convey by Warranty Deed (the "Deed"), fee simple ownership of the property owned by the Seller located at 14 South Paterson Street, Madison, Wisconsin (the "Property"), as legally described on the attached Exhibit A and shown on the attached Exhibit B, including all improvements located thereon and all appurtenances thereto free and clear from all liens and encumbrances excepting the following: municipal and zoning ordinances and the "Permitted Exceptions" (as defined in Paragraph 12).

2. Effective Date. The "Effective Date" shall be the later date of execution of this Agreement by the Seller or the Buyer, as indicated on the signature page.

3. Purchase Price. The total purchase price for the Seller’s interest in the Property (the “Purchase Price”) shall be Three Hundred Eighty Thousand Dollars ($380,000). The Purchase Price shall be payable at Closing, subject to the adjustments and prorations herein provided.

4. Earnest Money. Within ten (10) business days of the Effective Date, the Buyer shall deposit into escrow with the Title Company (as defined in Paragraph 12) Ten Thousand Dollars ($10,000) as “Earnest Money,” which will be non-refundable except as otherwise provided in Paragraphs 7, 12 and 17, to be applied toward the Purchase Price, along with any accrued interest, at Closing in accordance with Paragraph 3.

5. Limited Representations and Warranties; AS-IS Condition. To induce Buyer to enter into this Agreement, Seller makes the following representations and warranties, each of which is material and is relied upon by Buyer and is deemed restated as of the Closing unless otherwise noted below:

a. Good Title. Seller has, and will have, as of the Closing, good and marketable title to the Property. The Property shall be, on the Closing, free and clear from all liens and encumbrances excepting the following: municipal and zoning ordinances and the "Permitted Exceptions."

b. Authority. Seller has complete power and authority to sell, transfer and convey the Property to Buyer, and that persons signing below on behalf of Seller have the authority to execute this Agreement on behalf of Seller.

In all other respects, the Buyer shall purchase the Property in "AS-IS, WHERE-IS" condition and "with all faults", and shall agree that it relied upon no warranties, representations or statements by the Seller, or any other persons for the Seller, in entering into this Agreement or in closing the transaction described herein. The Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property and has waived or satisfied the Buyer's contingencies, as generally described in Paragraph 7. In closing and completing the transaction, the Buyer will have relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of the Seller or its agents or employees, other than those set forth in this Paragraph 5.

6. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Buyer's Contingency Period as described in Paragraph 7, the Seller will reproduce at the Seller's expense and send to the Buyer at the Buyer's office copies of all environmental studies, reports, permits, applications and remediation plans or assessments of the Property and correspondence between the Seller and any regulatory authority, and all studies, reports, plans or assessments related to the condition of the improvements on the Property including, but not limited to, asbestos, lead-based paint inspections and other hazardous waste inspections related to the physical condition of the improvements on the Property in the Seller's possession or control.

7. Buyer Contingencies. The Buyer shall have sixty (60) days from the Effective Date (the "Buyer's Contingency Period") to satisfy or waive the following contingencies or to otherwise terminate this Agreement if any of the Buyer's contingencies are unacceptable, in the Buyer's sole discretion. If the Buyer timely terminates this Agreement as a result of any of the Buyer's contingencies, the Earnest Money shall be promptly refunded to the Buyer and this Agreement shall be null and void.

a. Financing. The Buyer securing financing for the Purchase Price.

b. Inspections and Testing. The Buyer obtaining inspections and testing of the Property. The Buyer, at its sole expense, may obtain an inspection of the Property and all related improvements located on the Property, a Phase 1 or 2 environmental site assessment of the Property and related testing, soils testing and any other inspections or testing deemed necessary by the Buyer. In no event shall the Seller be required to cure any matter to which the Buyer objects relating to the condition of the Property or any improvements located thereon.

c. Survey and Title. The Buyer reviewing and agreeing to accept the condition of title to the Property as revealed by the title commitment and surveys to be delivered to the Buyer under Paragraphs 8 and 12.

d. Environmental Review. The Buyer reviewing and approving the documents to be delivered to the Buyer under Paragraph 6.

The Buyer's Contingency Period may be extended for an additional thirty (30) days by written notice from the Buyer to the Seller prior to the expiration of the Buyer's Contingency Period.

8. Survey. The Seller shall provide to the Buyer, at the Seller's expense, within sixty (60) days of the Effective Date, an ALTA/ACSM Land Title Survey of the Property that meets the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys effective February 23, 2016 in order to eliminate all survey related exceptions to the title insurance policy, certified as of a current

date in favor of the Buyer and title company providing the title insurance described in Paragraph 12. The survey shall show the location of all exceptions shown by the title commitment that are capable of being shown on a survey.

9. Access to Property. The Buyer and the Buyer's authorized agents, engineers, consultants and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing anticipated by the Buyer's contingency contemplated in Paragraph 7.b. including, but not limited to, a Phase 1 or 2 environmental assessment of the Property and/or a physical inspection of any improvements located on the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer will repair all damages caused by its inspections, at the Buyer's cost, so that the condition of the Property is returned to as good or better condition as existed prior to the inspection.

10. Indemnification. The Buyer and the Buyer's authorized agents, engineers, consultants and contractors shall be liable to and shall agree to indemnify, defend and hold harmless the Seller, and its officers, officials, agents, and employees against all loss or expense (including liability costs and reasonable attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the Seller or its officials, officers, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to the Property, including loss of use thereof, to the extent arising from, in connection with, caused by or resulting from the acts or omissions of the Buyer and/or its authorized agents, engineers, consultants and contractors, and all of their and Buyer's officers, agents, employees, assigns, guests, invitees, licensees, contractors or subcontractors, in the performance of any inspections or testing of the Property. Negligence on the part of the Seller and its officials, officers, agents or employees shall not eliminate the indemnification obligations stated in the preceding sentence.

11. Insurance. The Buyer and the Buyer's authorized agents, engineers, consultants and contractors shall carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by the Seller's Risk Manager: bodily injury, death and property damage of $1,000,000 per occurrence. The policy or policies shall name the Seller as an additional insured. As evidence of this coverage, the Buyer and the Buyer's authorized agents, engineers, consultants and contractors shall furnish to the Seller a certificate of insurance on a form provided by the Seller prior to entering on the Property to perform any inspections or testing as provided herein.

12. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days of the Effective Date a commitment from Knight Barry Title, 44 E Mifflin St Suite 101, Madison, WI 53703, (the "Title Company") to issue a 2006 ALTA Owner's Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Property, as of a date no more than fifteen (15) days before such title proof is provided to the Buyer, to be in the condition called for in this Agreement, and further subject only to liens which will be paid out of the proceeds of the Closing and to any exceptions accepted in writing by the Buyer ("Permitted Exceptions"). The Buyer shall notify the Seller of any valid objection to title, in writing, prior to Closing. The Seller shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections and Closing shall be extended as necessary for this purpose. Should the Seller be unable or unwilling to remove the objections, the Buyer shall then have the option, exercisable within thirty (30) days of the Buyer's delivery of its original notice of objection to title, to either (a) terminate this Agreement by delivery of written notice to the Seller, in which case this Agreement shall be null and void and the Buyer shall be entitled to a return of the

Earnest Money, or (b) waive such objections to title. The Buyer's failure to timely deliver written notice of termination under Section (a) of the preceding sentence shall be deemed to be waiver of the Buyer's objections to title. Between the effective date of the commitment and Closing, the Seller shall not place any additional encumbrances against the Property (except for such encumbrances that the Seller shall remove at Closing).

13. Closing.

a. The consummation of the purchase and sale of the Property, and recordation of the Deed conveying the Property to the Buyer free and clear from all liens and encumbrances, excepting Municipal and zoning ordinances and the Permitted exceptions, shall occur within ten (10) days after the waiver or satisfaction of the Buyer's Contingencies listed in Paragraph 7 at the office of the Title Company, unless the parties agree in writing to select a different location or extend the date of Closing to a later date ("Closing").

b. The Buyer shall pay all recording/filing fees except that the Seller shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the condition called for by this Agreement.

c. All real estate taxes with respect to the Property shall be prorated between the Buyer and the Seller as of the date of Closing based upon the latest known assessment and latest known mil rate.

d. The Seller shall be responsible for any and all special assessments, area assessments, interceptor charges or any other charges payable to any municipality or utility with regard to the Property as of the date of Closing.

e. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with conveyance of the Property.

f. The Buyer shall pay one-half, and the Seller shall pay the other half of any closing escrow fees charged by the Title Company to facilitate closing. All other closing costs shall be prorated between the Buyer and the Seller.

14. Default. If the Seller defaults in the full and timely performance of any of its obligations hereunder, the Buyer shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate this Agreement or seek specific performance. If the Buyer defaults in the full and timely performance of any of its obligations hereunder, the Seller, as its only remedy, may elect to terminate this Agreement and retain the Earnest Money as liquidated damages.

BE IT FURTHER RESOLVED that the Mayor and Clerk are authorized to sign and accept any and all documents and legal instruments required to complete the transactions contemplated in this resolution, on a form and in a manner that has been approved by the City Attorney.